

## **REMARKS/ARGUMENTS**

The Applicants have reviewed and considered the non-final Office Action mailed on January 29, 2008, and the references cited therewith. Claims 21-23, 25-41, and 45-50 are currently pending in the application. Claims 42-44 are cancelled. Claims 21, 29, 32, 37, 40, 41, 45, and 46 are amended. Claims 48-50 are new.

### ***Objections to the Claims***

The Examiner objects to claim 41 because of an informality. In particular, the Examiner states that the recited "incision" appears to be in error. (Office Action dated January 29, 2008, page 2). Claim 41 has been amended accordingly, thereby overcoming this objection.

### ***Double Patenting***

The Examiner provisionally rejects claims 21-23 and 25-47 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of co-pending U.S. Patent Application Number 11/200,837. The Examiner provisionally rejects claims 21-23 and 25-47 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of co-pending U.S. Patent Application Number 11/004,586. The Examiner provisionally rejects claims 21-23 and 25-47 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-62 and 64-84 of co-pending U.S. Patent Application Number 11/818,468. Applicants request that these provisional rejections be held in abeyance pending the resolution of the allegedly conflicting claims.

Claim Rejections – 35 U.S.C. § 103; Claims 21-23, 25-26, 29-34, and 37-47

The Examiner rejects claims 21-23, 25-26, 29-34, and 37-47 under 35 U.S.C. § 103 as obvious over UK Patent Application GB 2,307,180 (hereinafter “Hunt”) in view of U.S. Patent 5,549,585 (hereinafter “Mahar”) U.S. Patent 4,996,128 (hereinafter “Aldecoa”), and U.S. Patent 5,945,004 (hereinafter “Ohira”). More specifically, the Examiner states that:

Regarding claims 21, and 41-44, Hunt teaches a personally portable vacuum desiccator (210) for collecting and storing liquid exudate comprising:

a cartridge (100) having an interior chamber, inlet and outlet ports (32, 33);

a vacuum pump member (6) in gas/liquid communication (103) with the outlet port (33) of the chamber;

a motor (6A) operably connected to said vacuum pump (6); and

a tube (106) having a first end in fluid communication with the inlet port (32)(100)(see figures 1, 3A and 4, infra).

Hunt thus teaches the claimed invention except for the trapping agent in the chamber, the planar battery shape and the unidirectional inlet port.

Maher teaches a bodily fluid collect receptacle (20) to which an absorbent gelling treatment is added to the interior thereof to solidify liquid exudates. This avoids hazards associated with spillage (abstract)(see fig. 5, infra).

Ohira teaches a one-way check valve in entrance port (22). This prevents unwanted reverse flow of liquid out of the container.

Regarding the functional limitations of the claims, apparatus claims must be structurally distinguishable over the prior art. MPEP § 2114.

Aldecoa teaches a slim planar battery (20) that is shaped for insertion into compact personal electronic devices (abstract)(see fig. 1, infra).

Ohira teaches a one-way check valve in entrance port (22). This prevents unwanted reverse flow of liquid out of the container (col. 13, lines 42-49)(see fig. 2, infra).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the absorbent additive of Maher to the canister of Hunt in order to resist sloshing or spillage. It would have been obvious to further select the compact battery design of Aldecoa for its portability and to add the check valve of Ohira in order to prevent unwanted

backflow of liquid. (Office Action dated January 29, 2008, pages 5-9).

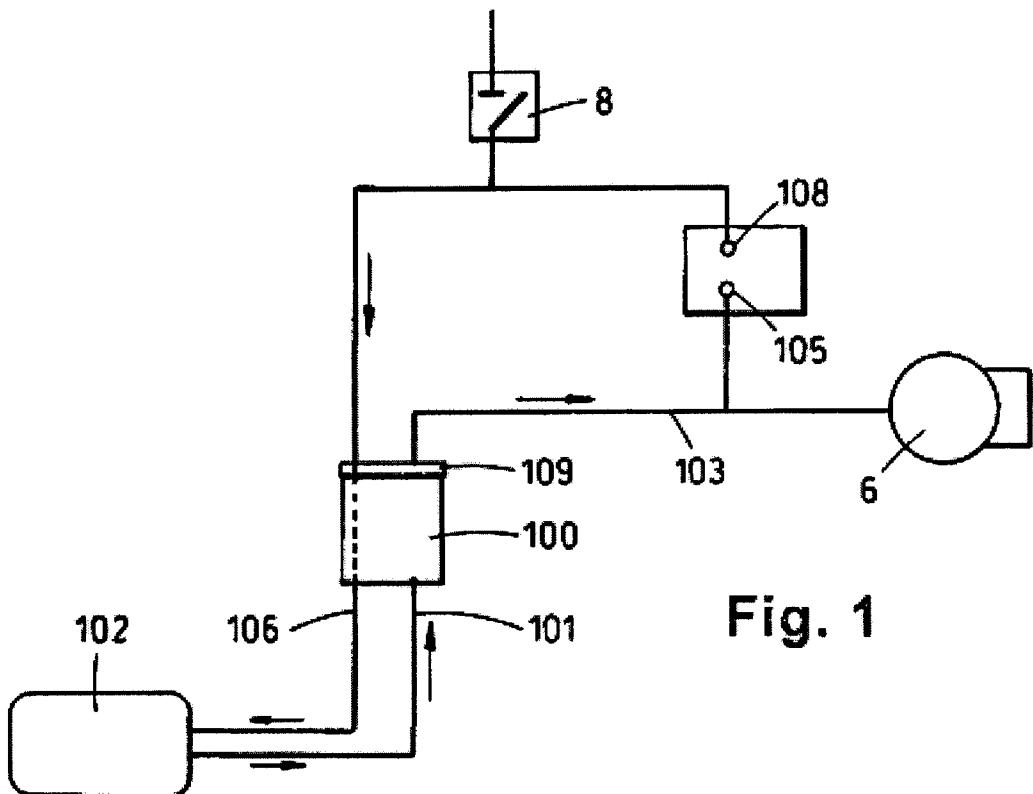
Claims 42-44 are cancelled, rendering the rejection against these claims moot. This rejection is respectfully traversed with respect to the remaining claims.

No *prima facie* obviousness rejection may be stated against amended claim 21 because Hunt, Mahar, Aldecoa, and Ohira, alone or in combination, fail to teach or suggest all of the features of amended claim 21. Also, Mahar teaches away from amended claim 21. The proposed combination also renders Hunt unsatisfactory for Hunt's intended purpose.

I. Hunt, Mahar, Aldecoa, and Ohira fail to teach or suggest all of the features of amended claim 21

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (U.S. Apr. 30, 2007) (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)). Additionally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Neither Hunt, Mahar, Aldecoa, nor Ohira teach or suggest all of the features of amended claim 21. Specifically, neither Hunt, Mahar, Aldecoa, nor Ohira teach or suggest at least a desiccator cartridge having a perforated gas flow channel. The Examiner cites a pressure relief valve 8 of Hunt against the feature of a gas flow channel. The pressure relief valve 8 is shown in Figure 1 of Hunt, which is reproduced below along with a relevant portion of Hunt describing the pressure relief valve 8:



In the event that it is desired to apply intermittent suction to the wound site, a pressure relief valve 8 enables the pressure at the wound site to be brought to atmospheric pressure rapidly. Thus, if the apparatus is programmed, for example, to relieve pressure at 10 minute intervals, at these intervals valve 8 will open for a specified period, allow the pressure to equalise at the wound site and then close to restore the suction. It will be appreciated that when constant suction (or negative pressure) is being applied to the wound site, valve 8 remains closed and there is no leakage from atmosphere. In this state, it is possible to maintain negative pressure at the wound site without running the pump continuously, but only from time to time, to maintain a desired level of negative pressure (i.e. a desired pressure below atmospheric), which is detected by the transducer 105. This saves power and enables the appliance to operate for long periods on its battery power supply. (Hunt, page 6, lines 12-23).

Neither the cited portion nor any other portion of Hunt teaches or suggests the feature of a desiccator cartridge having a perforated gas flow channel. Hunt discloses a portable pump for draining fluid from a wound

dressing. The cited portion discloses a pressure relief valve 8 that allows the pressure at a wound site to equalize or be brought to atmospheric pressure. However, the pressure relief valve 8 is not the same as a perforated gas flow channel.

On the other hand, amended claim 21 recites the feature of a desiccator cartridge having a perforated gas flow channel. As a first matter, the cited portions differ from the claimed feature because the cited portions nowhere teach or suggest that the pressure relief valve 8 is perforated, as claimed.

As a second matter, the cited portions differ from the claimed feature because the cited portion fails to teach or suggest that the pressure relief valve 8 is located in any cartridge at all, let alone a desiccator cartridge, which Hunt does not teach or suggest. Thus, the cited portions fail to teach or suggest a desiccator cartridge having a perforated gas flow channel.

Mahar fails to cure Hunt's lack of disclosure. Mahar discloses a suction drainage control system in which a gelling agent, absorbent, or germicide is released or dispensed into a disposable rigid container or flexible liner. However, even assuming, *arguendo*, that the rigid container or flexible liner of Mahar is a desiccator cartridge, the rigid container or flexible liner of Mahar still does not have a perforated gas flow channel. The Examiner does not assert otherwise.

Aldecoa and Ohira fail to cure Hunt and Mahar's lack of disclosure. Aldecoa discloses a rechargeable battery and Ohira discloses an apparatus for treating waste liquids containing body fluid, but neither reference teaches or suggests a desiccator cartridge having a perforated gas flow channel. The Examiner does not assert otherwise. Thus, Hunt, Mahar, Aldecoa, and Ohira, alone or in combination, fail to teach or suggest all of the features of amended claim 21. Therefore, no *prima facie* obviousness rejection may be stated against amended claim 21.

II. Mahar teaches away from amended claim 21

A reference may be said to "teach away" from the claimed invention when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. *In re Gurley*, 27 F.3d 551, 553, 31 U.S.P.Q.2D 1130, 1131 (Fed. Cir. 1995). If a reference teaches away from the claimed invention, then no proper reason exists to combine the references under the standards of *KSR, Int'l*.

In this case, Mahar teaches away from amended claim 21. Specifically, Mahar teaches disconnecting a vacuum source from the liner 23 so that waste-treating material may be inserted into the liner 23, after which the liner 23 may be disposed of. For example, Mahar provides that:

The operation of the system of the invention is now described with reference to FIGS. 4 to 6. On the completion of aspiration of waste material, such as body fluid, or when the liner 23 is almost full of fluid, the inlet tube is disconnected from the patient, or other waste source, and the vacuum source is disconnected. Preferably, the inlet tube is flushed with a suitable germicide, and the flushed material is collected in the liner 23. The inlet tube is then disconnected from the inlet port 24.

The cap 11 is removed from the nozzle 8 of the container 1. As shown in FIG. 4, the free end of the nozzle 8 is inserted into the open end of the inlet port 24 to dispense the waste-treating material from the container 1 into the liner 23. The waste-treating material acts within minutes to gel or solidify the waste liquid within the liner 23. The position of the container 1 when the nozzle 8 is fully inserted in the port 24 is illustrated in FIG. 5, and is shown in more detail in FIG. 6. As shown in FIG. 6, the nozzle 8 fits tightly within a tubular portion of the inlet port 24. The sleeve 9 of the container 1 fits over the outer wall of the inlet port 24 so that the top tubular portion of the inlet port 24 forms a friction fit within the annular space 10 between the nozzle 8 and the sleeve 9. In this way a very secure liquid-tight seal is obtained between the container 1 and the receptacle 20. (Mahar, column 5, lines 23-47, emphasis added).

Mahar teaches away from amended claim 21 because Mahar teaches disconnecting the vacuum source from the liner 23 so that waste-treating material may be inserted into the liner 23, whereas amended claim 21 recites a vacuum pump in fluid communication with the outlet port of a desiccator cartridge that has a trapping agent in the interior chamber. Furthermore, Mahar nowhere teaches or suggests connecting the vacuum source to the liner 23 after the waste-treating material has been inserted into the liner 23. Because Mahar teaches away from amended claim 21, no motivation exists to combine Mahar with Hunt, Aldecoa, and Ohira as proposed by the Examiner. Accordingly, no *prima facie* obviousness rejection can be made against amended claim 21.

III. The proposed combination renders Hunt unsatisfactory for Hunt's intended purpose

The Examiner has failed to state a *prima facie* obviousness rejection because the proposed combination renders Hunt unsatisfactory for Hunt's intended purpose. "If [the] proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." MPEP 2143.01 (citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

An intended purpose of Hunt is to provide a wound treatment apparatus that is portable for mobile patients. For example, Hunt provides that "an object of this invention is therefore to provide apparatus [sic] which can be used more conveniently, especially by patients who are reasonably mobile." (Hunt, page 1, lines 18-21). Hunt attempts to achieve this purpose by providing a system that is wearable by a patient. (See, e.g., Hunt, page 2, lines 3-8). Hunt also attempts to achieve this intended purpose by providing a readily removable canister that fits within a housing. For example, Hunt provides that the canister "should be removably mounted within the housing, e.g. by means of a latch or similar release mechanism,

so that the canister can be readily removed and replaced when full." (Hunt, page 2, lines 14-16).

The Examiner's proposed combination renders Hunt unsatisfactory for Hunt's intended purpose because using Mahar's non-wearable and obtrusive suction drainage infection control system defeats the entire purpose of Hunt's system. As a first matter, Mahar's suction drainage infection control system requires the use of separate components to dispense waste-treating material into the rigid container or liner of the system. These additional components detract from Hunt's purpose of providing a portable system that is wearable by mobile patients because the patient is required to carry additional components. Also, Mahar's system requires the receptacle containing the waste fluid to be disposed of each time waste-treating material is dispensed into the receptacle. The recurrent need to dispose of biologically hazardous waste materials in Mahar's system also detracts from Hunt's purpose of providing a portable system for mobile patients. Therefore, no *prima facie* obviousness rejection has been made against amended claim 21.

IV. The Age of the References Proves that No Motivation Exists to Combine the References

Applicants further submit that the age of the references serves as extrinsic evidence that no motivation or sufficient reason exists to combine the references in the manner proposed by the Examiner. Ohira, the most recently published reference, was published over a decade ago on July 8, 1997. Thus, one of ordinary skill has had publicly available the combination of Hunt, Mahar, Aldecoa, and Ohira for over ten years.

However, in those intervening ten years no one of ordinary skill has combined the references to achieve the invention of amended claim 21 because no known publication or product teaches or suggests all of the features of amended claim 21. In further light of the value of the invention of amended claim 21, had the invention of amended claim 21 been obvious,

then one of ordinary skill would have already combined the references and either published a reference describing the claimed invention or produced a product incorporating the claimed invention.

However, the Examiner has been unable to produce a single reference that teaches every feature of amended claim 21, and Applicants know of no such single reference. In the face of the failure of others over the last decade to disclose the invention of amended claim 21, the natural conclusion to draw is that amended claim 21 is non-obvious.

Because amended claim 21 is non-obvious, no sufficient reason exists to combine the references to achieve the invention of amended claim 21. Accordingly, the Examiner has failed to state a *prima facie* obviousness rejection against amended claim 21.

V. Conclusion

Because amended claim 21 is representative of claims 29, 37, 41, and 45 with respect to the argued feature, the same distinctions between amended claim 21 and the cited references apply to claims 29, 37, 41, and 45. Because claims 22, 23, 25, 26, 30-34, and 38-40, 46, and 47 depend from allowable claims 21, 29, 37, and 45, at least the same distinctions between the cited references and claims 21, 29, 37, and 45 apply for these claims as well. Additionally, claims 22, 23, 25, 26, 30-34, and 38-40, 46, and 47 claim other features and combinations of features not disclosed by the references. Therefore, the rejection of claims 21-23, 25, 26, 29-34, and 37-47 under 35 U.S.C. § 103 has been overcome.

Claim Rejections – 35 U.S.C. § 103; Claims 27 and 35

The Examiner rejects claims 27 and 35 under 35 U.S.C. § 103 as obvious over Hunt, Mahar, Aldecoa, and Ohira in view of U.S. Patent 4,464,172 (hereinafter “Lichtenstein”). This rejection is respectfully traversed.

The rejection of claims 27 and 35 relies on the false premise that Hunt, Mahar, Aldecoa, and Ohira teach or suggest all of the features of claims 21 and 29. However, as shown above, Hunt, Mahar, Aldecoa, and Ohira fail to teach or suggest a desiccator cartridge having a perforated gas flow channel. Lichtenstein does not cure Hunt, Mahar, Aldecoa, and Ohira’s lack of disclosure with respect to claims 21 and 29, and the Examiner does not assert otherwise. Therefore, Hunt, Mahar, Aldecoa, Ohira, and Lichtenstein fail to teach or suggest all of the features of claims 27 and 35, which depend from claims 21 and 29. Therefore, no *prima facie* obviousness rejection may be stated against claims 27 and 35.

Claim Rejections – 35 U.S.C. § 103; Claims 28 and 36

The Examiner rejects claims 28 and 36 under 35 U.S.C. § 103 as obvious over Hunt, Mahar, Aldecoa, and Ohira in view of U.S. Patent 5,741,237 (hereinafter “Walker”). This rejection is respectfully traversed.

The rejection of claims 28 and 36 relies on the false premise that Hunt, Mahar, Aldecoa, and Ohira teach or suggest all of the features of claims 21 and 29. However, as shown above, Hunt, Mahar, Aldecoa, and Ohira fail to teach or suggest a desiccator cartridge having a perforated gas flow channel. Walker does not cure Hunt, Mahar, Aldecoa, and Ohira’s lack of disclosure with respect to claims 21 and 29, and the Examiner does not assert otherwise. Therefore, Hunt, Mahar, Aldecoa, Ohira, and Walker fail to teach or suggest all of the features of claims 28 and 36, which depend from claims 21 and 29. Therefore, no *prima facie* obviousness rejection may be stated against claims 28 and 36.

New Claims 48-50

Applicants have added new claims 48-50. No anticipation or *prima facie* obviousness rejection may be stated against new claims 48-50 at least by virtue of their dependency on amended claim 21. Additionally, new claims 48-50 claim additional features and combinations of features not taught or suggested by the cited references.

**CONCLUSION**

If a Petition for Extension of Time under 37 C.F.R. 1.136(a) is required, the petition is herewith made. The Commissioner is authorized to charge any fees that may be required, or credit any overpayment made with this Office Action, to Deposit Account Number 19-3140.

In light of all the foregoing, believing that all things raised in the Office Action have been addressed, Applicant respectfully requests reconsideration of the prior rejections and objections, as well as allowance of the claims and passage of the application to issue. If the Examiner would care to discuss any remaining matters by phone, Applicant invites the Examiner to contact the undersigned at 214.259.0907.

Respectfully submitted,



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